IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6615 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PURUSHOTTAMDAS CHATRABHUJ MEHTA

Versus

BARODA OF TRUSTEES OF THE PORTOF KANDLA

Appearance:

MR PV HATHI for Petitioner

MR SR BRAHMBHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/08/2000

ORAL JUDGEMENT

Learned advocate Mr. Hathi has appeared for the petitioner. Learned advocate Mr. Brahmbhatt has appeared for the respondents. In this petition, on 5.10.1990, an order of "rule, expedited" was passed by

this court. The petitioner herein was working as Assistant Executive Engineer since February, 1965 and he was promoted in due course and thereafter he was confirmed on the said post with effect from 11thDecember, 1981. According to the petitioner, he was entitled to be considered and he was due to the promotion to the post of Superintending Engineer but by order dated 20.8.1988, he was superceded in the matter of promotion and respondent NO.2 J.J. Todarmal who was junior to the petitioner who was confirmed as Executive Engineer with effect from 20th May, 1982 was promoted to the post of Superintending Engineer by order dated 20th August, 1988. Therefore, in this petition, the petitioner has challenged the order dated 20.8.1988 promoting respondent No. 2 as Superintending Engineer and has also prayed to declare that the action of the respondent no.1 in superceding the petitioner is illegal and unconstitutional. There is another prayer made in this petition to quash and set aside the orders dated 19th September, 1987 Annexure "H" and 16th November, 1987 Annexure "I" and to direct the respondent no.1 to pay leave salary for the leave period. The petitioner has also prayed for the relief to direct the first respondent to consider the case of the petitioner for promotion. The petitioner has produced the order under challenge dated 20th August, 1988 on record of this petition. Affidavit in reply has been filed by the respondents against the present petition on 27th June, 1990 against which, affidavit in rejoinder has also been filed by the petitioner on 26th July, 1990.

During the pendency of this petition, the petitioner has retired from service on 31.10.1989 and subsequently, during the pendency of this petition, the petitioner expired on 21.1.1999 and, therefore, by moving civil application no. 4852 of 2000, legal representative of the petitioner namely widow of the deceased petitioner has been brought on record of the petitioner.

Looking to the peculiar facts and circumstances of the present case, that the petitioner has retired from service on 31st October, 1989 and subsequently he died on 21st January, 1999 during the pendency of the present petition, I am of the view that the ends of justice will meet if the respondents are directed to consider the case of the petitioner sympathetically for promotion to the post of Superintending Engineer keeping in view the fact that the junior to the petitioner namely respondent No.2 was promoted with effect from 20th August, 1988.Therefore, it is directed to the Secretary of the first respondent Boardof Trustees of the Port of Kandla constituted under the Major Port Trusts Act, 1963 having

his office at Gandhidham to treat the present petition as alongwith affidavit in reply filed thereto by the respondents and the affidavit in rejoinder thereto filed by the petitioner as a representation of the petitioner for promotion to the post of Superintending Engineer with effect from 20th August, 1988 and also to consider the prayer of the petitioner in respect of the order dated 19th September, 1987 annexure "H" and 16th November, 1987 ANnexure "I" and to decide as to whether the petitioner is entitled for leave salary for the said period or not. In view of the fact that the petitioner has expired on 21.1.1999, respondent no.1 is directed to consider the said representation sympathetically and in accordance with the rules and regulations of the respondent No.1 as to whether the petitioner is entitled to promotion to the post of Superintending Engineer with effect from 20th August, 1988 with all consequential benefits or not and whether the petitioner is entitled for the salary for the leave period or not as mentioned in the petition. Such representation shall be decided by the respondent authority within the period of two months from the date of receipt of the order of this court alongwith all the necessary papers. Respondent NO.1 is further directed to communicate result of such consideration of the representation of the petitioner. If such decision is against the petitioner, then, the petitioner will be entitled to challenge the same before the appropriate forum in accordance with law. Respondent No.1 is further directed to pass speaking order accompanied by reasons in respect of the representation of the petitioner. Office is directed to issue writ of this order alongwith copy of the memo of petition, annexures thereto as well as affidavit in reply and affidavit in rejoinder to the reply to the respondent No.1 Secretary of Board of Trustees of the Port of Kandla constituted under the Major Port Trusts Act, 1963 having its office at Gandhinagar within fifteen days from today. Subject to these observations and directions, this petition is disposed of. Rule is discharged accordingly with no order as to costs.

11.8.2000. (H. K. Rathod,J.)

Vyas